

Editorial

Over the years, a significant shortcoming of democratisation in most African states has been the exclusion or near total absence of the judiciary in spaces that shape the discourse on critical political policy and decision making. The year 2017 witnessed significant instances of the highest courts in African countries being called upon to determine election-related and other constitutional disputes. Adding to a long line of influential decisions affirming constitutional rights by the South African Constitutional Court, on 1 September 2017 the Kenyan Supreme Court invalidated the Kenyan presidential elections of 8 August 2017. Similarly, although it eventually found insufficient evidence to invalidate the first round of Liberian presidential elections, the Liberian Supreme Court in November 2017 ordered that country's run-off elections be halted pending a determination of allegations of election fraud and irregularities.

In addition to these decisions related to electoral disputes, courts in Africa have increasingly dealt with rights-based issues during the past year. In November 2017, for example, the Lobatse High Court (in Botswana) ordered the Registrar of National Registration to change the gender marker on a transgender man's identity document (*ND v Attorney-General of Botswana & Others*).

In this issue of the *Journal*, Kibet and Fombad reflect on the South African and Kenyan experiences as a basis for transformative constitutionalism in adjudicating constitutional rights in Africa, more broadly. Against the background of a greater recourse to African judiciaries in the constitutional context, this is a very timely contribution to on-going discussions on the role of the judiciary in post-colonial Africa.

In recent years, the right of access to information has received considerable attention, also in Africa. In 2013, the African Union's longest-standing human rights body, the African Commission on Human and Peoples' Rights, adopted a Model Law on Access to Information for Africa. One of the major obstacles to realising this right is the notion of national security. Salau's contribution to this issue points to the potential of the Model Law and the African Commission's approach to effectively protect access to information on the continent.

Many countries in Africa have undergone, are undergoing, and are likely to undergo transitional processes. A prominent example is The Gambia, which is in the early stages of preparing for such a process

following the restoration of democracy in 2017. Two important elements of these processes are prosecutions for past atrocities, on the one hand, and truth-seeking about such atrocities, on the other. By juxtaposing the truth-seeking in the South African truth and reconciliation process with the Red Terror trials in Ethiopia, Reta argues that prosecution should be combined with other measures to uncover the truth, so as to achieve healing and reconciliation.

Three articles in this issue of the *Journal* speak to pertinent issues in relation to specific African countries. Anifalaje looks into the constitutional and legislative basis of advancing the right to social security in Nigeria. Gumboh's contribution investigates, against the background of recent Malawian jurisprudence, what the most appropriate and constitutionally-compliant test is to apply when a court considers the release of a convicted accused who appeals the conviction. In his analysis of an important Sudanese Supreme Court decision dealing with a conflict between two legislative provisions, delimiting childhood as ending at 15 and 18, respectively, Khalil argues for legal reform to eliminate this discrepancy. It should be noted that this contradiction would have been eliminated if Sudan had accepted as binding and implemented the African Charter on the Rights and Welfare of the Child. This AU treaty is unequivocal in setting 18 as the upper age-limit of childhood. In as much as these analyses depart from the country-specific setting, they offer useful insights into the situation in other African countries.

From time to time, the *Journal* contains a 'special focus' section. In this issue, the focus falls on adolescent sexual and reproductive rights in Africa. The three articles dealing with adolescent sexual and reproductive rights are introduced by an editorial by Charles Ngwena and Ebenezer Durojaye, who took the responsibility as co-editors, including overseeing the peer-review process.

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